on a unit-by-unit basis. As the Commission recognizes, as opposed to the building-by-building context, "in the unit-by-unit context, the MDU owner would be expanding its residents' choices, not restricting them."[43] Unit-by-unit competition permits each MDU household to choose video service providers that provide the optimal combination of programming, service and price.

1. There is no evidence that MDU owners will select an MVPD on the basis of resident choice.

In the Further Notice, the Commission "tentatively conclude[s] that where the real estate market is competitive it will discourage MDU owners from ignoring their residents' interests."[44] The Commission assumes that landlords' primary concern in making video service decision is their residents' well-being, and that they will therefore select building-by-building or unit-by-unit competition based on which approach is in the best interest of their residents. In support of this assertion, the Commission cites to the Comments of the Building Owners and Managers Association, the MDU owners' trade group, as support.[45] This is obviously a biased viewpoint, however, and there is no objective evidence that the real estate market is responsive to the video service interests of residents. Any such assumption fails to recognize the overwhelming incentive for an MDU owner to choose to restrict access to its building in the hope of extracting further compensation from the MVPD and/or the residents, the option that is least in the interest of its residents. Indeed, the Commission acknowledges in the Further Notice that MDU owners' failure to permit

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[43] Id. at ¶ 47.

[44] Id.

[45] Id.

multiple MVPDs to compete in their buildings stifles "the ability of subscribers who live in MDUs to choose among competing service providers."[46] The proposal put forth by the Commission in the Further Notice lacks any incentive for an MDU owner to choose the most pro-consumer, pro-resident option, to allow unit-by-unit competition within the building, and allow consumers, not landlords, to make the decision as to which video service provider is best able to serve them.

The Commission also assumes that residents are fully aware of would-be MVPD competitors' access rights. For the most part, however, MDU residents cannot be expected to know, and in fact do not know, about MVPDs' rights of access in their buildings, and MDU owners have little incentive to inform them of any such rights if they exist. Surely, most residents do not know about kickbacks paid to landlords by non-cable MVPDs.[47] Since MVPDs will ultimately pass along such costs of doing business in the form of higher subscription fees, residents would likely not approve of such kickbacks if they knew about them.

The Commission's reliance on the competitive real estate market also ignores that the unquantifiable, somewhat intangible benefits of reflecting residents' wishes in a competitive market can be easily outweighed by the prospect of immediate, direct financial benefits, such as kickbacks. Therefore, if the Commission adopts rules regarding the disposition of home

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[46]Id. at ¶ 25.

[47]Additionally, as at least one commenter noted, cable operators may be prevented from competing with other MVPDs by offering such compensation to MDU owners, thus placing such cable operators at a distinct competitive disadvantage. Id. at ¶ 18, citing Charter/Comcast Comments at 17 and n.28.

run wiring in building-by-building transitions, certain changes are necessary to ensure that MDU owners have a real incentive to make decisions that are in the best interest of MDU residents, and to promote competition and consumer choice. Specifically, any rules that the Commission ultimately adopts must make MDU owners accountable to MDU residents by limiting the applicability of any MDU home run disposition procedures to situations where the MDU owner has received no consideration from the incoming MVPD.[48]

2. Building-by-building rules should apply only where an MDU owner does not receive any compensation from the MVPD.

As the record in this proceeding reflects, many MDU owners act based on financial incentives, such as kickbacks offered by would-be MVPDs, in return for supplanting the incumbent MVPD.[49] For example, Cable One's recent July 1, 1997 ex parte letter to the Commission outlined an anticompetitive situation in Fargo, North Dakota, in which Cable Plus, an unfranchised SMATV operator, used kickbacks to MDU owners to gain exclusive contracts to serve numerous apartment buildings. Residents of the buildings did not have the choice of selecting between Cable One and Cable Plus, but rather, had to accept the landlord's choice of Cable Plus. These residents now pay more to receive fewer services than before.[50]

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[48]Such consideration to MDU owners could be in forms other than payments, such as free service to building managers.

[49]See, e.g., Joint Cable Parties Comments at 7-8; Continental/Cablevision Comments at 21-22.

[50]Ex Parte Letter from Thomas O. Might, President, Cable One, Inc. to William F. Caton, Acting Secretary, Federal Communications Commission, CS Docket No. 95-184, July 1, 1997, attached hereto as Exhibit A.

In another instance involving one of the Commenters, during the past six months, West Chester University in Pennsylvania requested bids on providing video service to its dormitories, which were pre-wired. Suburban submitted a bid of $16.50 per month for 34 channels, with premium services offered at $7.95 each, all individually billed. Suburban's bid did not include any commissions to the University. The other MVPD who submitted a bid priced its service at $18.95 per month for fewer channels than the number offered by Suburban, with premium services priced at $10.95 per month. This MVPD's bid, however, included commissions to the school based on a percentage of the revenue obtained from subscribing students. Apparently, the compensation made the difference, because the University granted the contract to this MVPD, forcing students to pay higher prices for fewer channels than the package Suburban offered.

In addition, earlier this year the U.S. Court of Appeals for the Fourth Circuit upheld a lower court's ruling that Charlottesville Quality Cable Corporation ("CQC"), in paying 12% kickbacks to MDU building owners in Charlottesville, Virginia for access, violated Virginia law. The court also found that, in paying the kickbacks and disconnecting the service of Multi-Channel TV Cable Company, a subsidiary of Adelphia, the competing MVPD in the buildings, CQC violated Virginia's civil conspiracy statute for maliciously attempting to conspire with the MDU owner to harm Adelphia.[51]

Often, the MDU owner has a direct financial investment in a non-cable MVPD seeking to serve the building. For example, in Odessa, Texas, where Cable One provides

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[51]Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Corp. et al., 108 F.3d 522 (4th Cir. 1997).

cable service, an MDU complex owner has a significant ownership interest in LyncStar, a Satellite Master Antenna Television ("SMATV") operator which serves the complex. The same is true regarding several MDU complexes served by SMATV operator ASCI in Morrisville, PA, where Suburban is franchised to provide cable service. Suburban has found it extremely difficult to enter such premises to market its competing service door-to-door. In another well-known case involving numerous MDU buildings in New York City, the building owners, the Milstein family, also owned the incumbent MVPD, Liberty Cable and, in direct violation of New York State's right of access statute, refused for years to allow another MVPD, Time Warner Cable, to compete in such buildings.[52] As these examples illustrate, the MDU owner has a direct financial incentive to give exclusive access to its affiliated MVPD, but such interests may conflict with the residents' interests.

Accordingly, if the Commission decides to apply home run wiring rules to building-by-building situations, such rules should only apply where the MDU owner does not receive any form of compensation from the MVPD in return for access to the building. This includes situations in addition to those where an MDU owner receives a direct financial kickback from a video service provider. For example, the rules should not apply where MDU owners bundle video service with rent. In such situations, the MDU owner acts as a reseller of the video service and can pass on the cost of the MVPD's kickback to residents by increasing the rent. Residents are doubly harmed because not only do they suffer a rent increase, they are in effect forced to take the MVPD's service even if they do not want it,

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[52]See, e.g., Reply to Opposition to Petitions to Deny, W-P-C-6836, filed January 7, 1993 by Time Warner Cable, at 9-11.

since they are paying for such service in their rent. By applying the proposed rules only where there is no possibility of the MDU owner being unduly swayed by payment from the MVPD, the MDU owner will be able to concentrate on meeting the interests of its residents.

However, the rules could apply where video service is provided pursuant to bulk discount agreements which are marketed directly to residents. In such situations, residents have the choice of accepting or declining the service picked by the landlord, and would only pay for service if they subscribe. Moreover, bulk discounts often are determined based on a sliding scale, whereby the more residents that sign up for the service, the bigger the discount. Therefore, the residents, not the landlord, in the aggregate determine the amount of discount. Thus, the benefits flow directly to MDU residents, and cannot be captured by the landlord.

In the Further Notice, the Commission states that "duplicating the behavior of a competitive market" is one of its goals.[53] The Commenters' suggestion of removing the MDU owner's incentive to act against the best interest of its residents in deciding which service provider to grant access to, produces results that most accurately reflects a competitive marketplace where no entity could distort the market by acting as a gatekeeper. Furthermore, without incentives to limit access, many landlords might decide that the benefits of multiwire competition, i.e., diverse programming and service packages, are well worth making available to their residents. This result would clearly produce the outcome favored by the Commission. Indeed, Congress expected that the 1996 Act would promote facilities-based competition in the video services industry. For example, Congress sought to

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[53]Further Notice at ¶ 62.

encourage telephone companies to further build and develop their own broadband networks.[54] Additionally, the Commission itself has promoted facilities-based video competition.[55] While the Commission cites several commenters who argue that many MDU owners "refuse to allow installation of a second set of cable wires in their buildings due to the risk of property damage, space limitations and aesthetic concerns,"[56] the record in this proceeding demonstrates that multiwire competition is feasible. Certainly, the evidence put forth by Time Warner and Cablevision regarding almost 500 MDUs subject to multiwire competition,[57] as well as the comments of some cable operators stating that they often are the second entrant in an MDU and install their own inside wiring, including home runs,[58] proves that such competition is feasible.

Moreover, the commenters who cited landlord resistance to multiwire MDU competition neglected to mention that landlords can get bigger kickbacks by auctioning exclusive rights than by allowing competition. As the Further Notice repeatedly recognizes, the landlords' ability to auction exclusive rights proves that they, not the incumbent MVPDs,

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[54]See, e.g., H.R. Rep. No. 204, 104th Cong., 1st Sess. 53 (1995) ("the deployment of broadband networks would be accelerated if telephone companies were permitted to offer video programming.")

[55]Further Notice at ¶ 62 ("we recognize that subscriber choice would be enhanced by the use of multiple wires.")

[56]Id. at ¶ 11, citing WCA Comments at 13, Multimedia Development Comments at 15, Riser Mgmt. Comments at 4, ICTA Comments at 21, DIRECTV Comments at 2 (footnotes omitted); Further Notice at ¶ 25.

[57]Further Notice at ¶¶ 27-30.

[58]Id. at ¶ 18, citing Cox Reply Comments at 10-11, Guam Cable TV Comments at 4-5.

are the true bottlenecks to MDU competition.[59] Indeed, as recognized early in this proceeding, MDU owners act as "broadband services gatekeepers," using their "authority to grant or deny service providers access to potential subscribers residing in MDUs based upon consideration that may be wholly unrelated to the range and quality of services offered by providers" and most commonly based solely upon "their own pecuniary interests."[60] Factors that are in the best interest of MDU residents, such as video service providers' technical proficiency, diversity of programming, innovativeness, service quality, service price or customer service, are often missing from the MDU owners' decision making.

The landlord's power to act as a bottleneck, i.e., to exclude video service competition, gives the landlord the ability to seek compensation from MVPDs in exchange for such exclusivity. Restricting access, while extremely lucrative for the MDU owner, is clearly contrary to the best interests of its residents.[61] While such a scenario benefits the exclusive provider via guaranteed revenues and protection from competition, and benefits MDU owners economically in the form of kickbacks, MDU residents' interests are violated. According to the Commission,

> We believe that property owners' resistance to the installation of multiple sets of home run wiring in their buildings may deny MDU residents the ability to choose among competing service providers, thereby contravening the purposes of the

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[59]See, e.g., Further Notice at ¶¶ 11, 25, 26, 56.

[60]Comments of Cablevision, Inc. and Cablevision Systems, Corp. at 22.

[61]It is standard practice for non-franchised video service providers such as SMATV operators to enter into such long-term exclusive contracts with an MDU owner in exchange for providing the MDU owner a cut of the revenues derived from MDU resident subscribers.

Communications Act, and particularly Section 624(i), which was intended to promote consumer choice and competition.[62]

Rather than dismissing facilities-based competition as impossible, therefore, the Commission should attempt to find the best way to implement Congress' express intent to promote facilities-based competition, and to promote the construction of multiple broadband infrastructures. Thus, the Commission should not adopt the regulatory scheme as proposed in the Further Notice without the refinements proposed herein.

B. There Is No Reason To Believe MDU Owners Will Pay Fair Market Value For Cable Wiring.

The Commission suggests in the Further Notice that, "[w]here the incumbent provider elects to sell the home run wiring, our preference is to let the parties negotiate the price of the wiring."[63] Accordingly, the Commission "seek[s] comment on whether market forces would provide adequate incentives for the parties to reach a reasonable price."[64] The Commenters are skeptical that market forces alone are sufficient to establish reasonable prices when the FCC is creating essentially a forced sale situation. Under the proposed rules, when an MDU owner elects building-by-building competition, an incumbent provider will typically choose to protect its property by electing to sell its wiring rather that remove it or abandon it. However, MDU owners and alternative MVPDs will have little incentive to agree on a reasonable price for purchasing the wiring, since, absent such agreement, under the current proposal, if the incumbent MVPD does not remove the wiring, it is deemed

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[62]Further Notice at ¶ 26.

[63]Id. at ¶ 37.

[64]Id.

abandoned and the MDU owner or alternative MVPD would receive it for free. Instead of offering the provider a fair price, the MDU owner will likely stall negotiations and/or refuse to purchase the wiring.

The only protection against this occurrence is the incumbent MVPD's ability to remove the wiring. However, this will often be an unrealistic alternative. Incumbent MVPDs are not likely to incur the time, expense, and ill will of residents by taking the disruptive step of ripping out the home run wiring in MDU buildings. This is especially true where the MVPD hopes to compete in the future to win back residents in the building.

Moreover, any rules adopted in this proceeding should not create incentives for MVPDs to rip out home run wiring. Otherwise, the rules will not, as the Commission claims, "accelerate rapidly private sector deployment of advanced telecommunications and information technologies," as directed by Congress.[65] As noted above, Congress specifically stated that consumers should be able "to utilize the wiring with an alternative multichannel video delivery system and avoid any disruption the removal of such wiring may cause."[66] The Commission cites this goal more than once in the Further Notice.[67] However, the Commission's proposed rules would hinder and even reverse such deployment by encouraging MVPDs to remove home run wiring.[68]

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[65]Further Notice at ¶ 61, quoting Conference Report at 1.

[66]H.R. Rep. No. 628, 102d Cong., 2d Sess. 118 (1992).

[67]Further Notice at ¶¶ 5, 26.

[68]This is particularly the case where the buildings were pre-wired for cable service, as are most recently constructed buildings. In such buildings, the cost to replace the wiring once it is ripped out could be astronomically higher than the original installation costs.

To avoid such anti-consumer incentives, the Commenters suggest that, if the incumbent MVPD elects to sell the home run wiring and a price cannot be agreed upon through negotiation, the matter should be referred to a third party. Either the parties should be required to submit to binding arbitration to establish a fair market value for the wiring, or a Commission mechanism could be established, such as alternative dispute resolution.[69] No matter where the sale price is reached, however, certain concepts should apply. First, the Commission should not directly set a default price. This would make price negotiations unfair, since an FCC-set price would in effect establish a price ceiling, tilting negotiations in favor of the purchaser, i.e., the landlord. Second, the establishment of a price for MDU inside wiring must take into account the full fair market value, not merely the material or depreciated book value, of the wiring. This is mandated by the Constitution,[70] as well as by the Communications Act.[71] Otherwise, valuation of the wiring will have failed to account for the fact that, in addition to the original installation costs, most MVPDs have incurred large expenses to maintain and upgrade the facilities, provide customer service, and maintain goodwill. Third, in order to pass Constitutional muster, third party determination of fair market value of the wiring must be subject to a de novo adjudication. Otherwise, the

[69]See 47 C.F.R. § 1.18

[70]See, e.g., Olsen v. United States, 292 U.S. 246, 255 (1934); United States v. 50 Acres of Land, 469 U.S. 24, 33 (1984), Kirby Forest Industries v. United States, 467 U.S. 1, 10 (1984).

[71]See 47 U.S.C. § 547; H.R. Rep. No. 934, 98th Cong., 2d Sess. 76 (1983).

same governmental entity that determined the value of the wiring would impermissibly be responsible for the "taking" of the wiring as well.[72]

Alternatively, if the owner elects to switch over its building to a new video provider, the MDU owner, not the incumbent MVPD, should be required to make the election to either purchase the home run wiring, allow it to remain in place, or assume the expense of its removal. If the parties do not agree on the terms of the sale, the alternative procedure explained above would apply. Of course, the MDU owner would not be forced to purchase the wiring, but if it elects to do so, the parties would have certainty that the wiring would be sold. The Commission has stated that certainty is beneficial.[73] Thus, the MDU owner could elect to buy the home runs at fair market value. The MDU owner could also elect to have the home run wiring removed, at its own expense. Where the MDU owner or incoming MVPD has not elected to purchase the home runs, the incumbent MVPD would be entitled to protect its property rights and prohibit other parties from using the facilities. Finally, the MDU owner could elect to allow the incumbent provider to retain its facilities on the property, with the right to exclude others from using such facilities. If, on the other hand, the MVPD must make the election as to the disposition of the wiring, because of the owner's incentives to stonewall, as explained above, there is no certainty that the wiring will be sold.

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[72]See Florida Power Corp. v. FCC, 772 F.2d 1537, 1544, 1546 (11th Cir. 1985), rev'd on other grounds, 480 U.S. 245 (1987).

[73]Further Notice at ¶ 4.

C. Unit-by-Unit Competition Should Be Encouraged.

The Commission seeks comment on its proposal for unit-by-unit disposition of home run wiring. Specifically, where the incumbent MVPD owns the home run wiring in an MDU, upon expiration of the MVPD's contract to serve the MDU, the Commission proposes that the MDU owner may elect to permit MVPD competition on a unit-by-unit basis.[74] The Commenters strongly favor such unit-by-unit competition, which maximizes individual resident choice, over the wholesale building-by-building approach, which destroys resident choice and encourages kickbacks to MDU owners. However, for the unit-by-unit approach to work equitably, the Commenters suggest the following procedures:

First, the Commenters agree that "the MDU owner and/or the new provider could also work out arrangements for an up-front lump sum payment in lieu of a unit-by-unit payment."[75] A single up-front payment would be far more efficient than unit-by-unit payments, furthering Congress' goals.[76] Indeed, a single up-front payment would reflect the realities of the marketplace, which is characterized by high rates of churn, where MDU residents move from year to year, especially in rental units. Just because one family in an MDU unit would choose a particular MVPD does not mean that, when family moves and is replaced by another, the new family would make the same choice. Even where residents do not move, they may change their MVPD choice. For example, in Morrisville, PA, where Suburban has a cable franchise, SMATV operator ACSI offered one month of free service to

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[74]Id. at ¶ 39.

[75]Id. at ¶ 40.

[76]See id. at n.70, ¶¶ 57, 81.

residents of an MDU complex if they switched from Suburban to ASCI. While this offer initially caused Suburban's penetration to drop from about 75% of the complex to 35%, Suburban has gained back many of these subscribers after ACSI's free service expired. It would be senseless to force MVPDs to sell or abandon home run wires on a unit-by-unit basis, only to have to re-wire the building months later. Instead, the MVPD competitor should pay up front 50 percent of the fair market value of all the home runs in the MDU. Second, subsequent competitors who are chosen to serve a unit would be required to reimburse existing competitors their pro rata share of the cost of the home run wiring in the building. Third, each competitor would be guaranteed a reasonable contract length, such as 15 years.

Fourth, the Commenters disagree that it would be proper, as a general rule, "to permit the alternative service provider or the MDU owner to act as the subscriber's agent in providing notice of a subscriber's desire to change services,"[77] especially in the unit-by-unit context. As explained above, due to kickbacks from MVPDs, owners' interests may directly conflict with those of residents in choosing the best MVPD. The Commenters have experienced numerous situations where MDU owners or competing MVPDs act as alleged agents for MDUs residents and switch their service from one provider to another without the affirmative consent of the residents. For example, Cable One has had resident subscribers switched to other MVPDs without their consent in at least three locations -- Fargo, ND; Odessa, TX; and Gulfport, MS. In none of these cases did the competing MVPD market its service directly to the residents; rather, the property owners switched the service wholesale

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[77] Id. at ¶ 39 (footnote omitted).

without the residents' approval. In fact, in Gulfport, it was angry subscribers who first alerted Cable One to the problem.

The Commission must clarify that such behavior, known as "slamming,"[78] is contrary to the stated public policy goal of promoting consumer choice, and is not sanctioned by the Commission's inside wiring rules as they now exist or are revised. There is no valid reason, in a building subject to a right of access statute or where residents have the right to take video service from multiple providers, why any third party can better make such decisions than the residents themselves. The Commission should therefore clarify, especially in buildings open to MVPD competition, that only the MDU resident is entitled to make a choice regarding video service providers, unless the resident gives written authorization to the MDU owner to act as its agent in this decision.

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[78] See id. at ¶ 39.

VI. CONCLUSION

For all the reasons set forth above, the Commission should not adopt the proposal put forth in the Further Notice as it currently exists. Rather, if it adopts home run wiring rules along the lines of the proposals in the Further Notice, certain clarifications and refinements, as explained herein, should be implemented.

Respectfully submitted,

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Dated: September 25, 1997

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EXHIBIT A

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THOMAS O. MIGHT PRESIDENT & CEO

July 1, 1997

VIA HAND DELIVERY
Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CS Docket No. 95-184

Dear Mr. Caton:

I am writing on behalf of Cable One, Inc. ("Cable One"), formerly Post-Newsweek Cable, Inc., with regard to the Commission's deliberations in the above-referenced proceeding relating to broadband wiring used to provide multichannel video programming service to residents of multiple dwelling unit ("MDU") properties. Cable One operates multiple franchised cable television systems across the country, primarily in rural and non-urban areas.

Cable One understands that the National Cable Television Association ("NCTA") has made several *ex parte* presentations in this proceeding advocating a proposal which would create incentives for owners of MDU properties to allow multichannel video programming distributors ("MVPDs") to compete head-to-head for subscribers in MDU properties, without having to construct multiple sets of home run wiring running to each unit. Cable One agrees that a regulatory approach which facilitates unit-by-unit competition for video subscribers in MDU properties is the best policy to achieve Congressional goals to provide more choice for video consumers.

Rather than embrace the pro-competitive proposal advanced by NCTA, Cable One understands that certain Commissioners and staff members seem to be considering an approach proposed by the Independent Cable and Telecommunications Association ("ICTA") designed to facilitate the ability of MVPDs to enter into exclusive contracts with MDU owners to be the sole provider of multichannel video programming to residents of such MDU. Under this approach, MDU residents would be denied the ability to choose among MVPDs, but rather would be forced to obtain all such service from the sole-source supplier selected by the MDU owner.

Certain advocates apparently have attempted to rationalize this facially anticompetitive ICTA approach under the theory that building-by-building competition is a reasonable proxy for unit-by-unit competition and that MDU owners can be trusted to choose the MVPD which will be "best" for their residents.[1] It is Cable One's experience that MDU owners rarely award exclusive contracts to MVPDs based upon paternalistic notions of consumer welfare, but rather are most often influenced by that MVPD willing to pay the largest kickback in return for the exclusive contract. A recent example involving MDU SMATV systems operating in Fargo, ND typifies Cable One's experience in this regard.

In Fargo, ND, Cable Plus, an unfranchised SMATV operator, has recently entered into exclusive contracts to provide service to Trollwood Manor Apartments and Edgewood Court Apartments, MDU properties formerly served by Cable One, the franchised cable television system in the City of Fargo. As is demonstrated by the attached service comparison and rate cards, the residents of these particular MDUs are in every case harmed by the landlord's choice of a new MVPD. The SMATV operator's lowest priced service costs residents $13.70 more per month than Cable One's lowest priced service, depriving low income subscribers of an affordable lifeline level of service. Furthermore, the SMATV operator's intermediate level of service costs $4.45 more than Cable One's intermediate level of service, yet contains five fewer channels. Similarly, the SMATV operator's most extensive level of service costs $3.30 more than that of Cable One, yet contains three fewer channels. This trend continues with regard to rates for premium services, equipment rental and service calls -- in every case, Cable One offers lower rates than the SMATV operator awarded exclusive contracts by the MDU owner. Yet, because residents did not have the right to select between Cable One and the SMATV operator, but rather had that choice made for them by their landlord, every resident of these MDUs now pays more to receive less service than would be the case if they were given the ability to choose among competing MVPDs.

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[1]By the same token, it could be argued that local elected officials can be presumed to act in the best interests of their constituents, and thus should be allowed to award an exclusive contract, through competitive bidding or otherwise, to a single MVPD deemed "best" for that community. Congress expressly rejected this approach in the 1992 Cable Act. See 47 U.S.C. § 541(a)(1).

	CABLE ONE (Franchised Cable Operator)	SMATV OPERATOR
Basic	$10.25/12 channels	$23.95/30 channels
Intermediate	$25.45/43 channels	$29.90/38 channels
Expanded	$29.90/50 channels	$33.20/47 channels
Disney Channel	Included on Intermediate tier	$8.95
HBO	$9.95	$10.95
Showtime	$7.95	$8.95
Exclusive Contract with MDU	NO	YES
Kickbacks Paid to MDU	NO	YES

The foregoing example is not just an isolated situation limited to these two most recent buildings. In all, landlords of 21 Fargo MDU buildings containing over 2,500 dwelling units have chosen kickbacks over more services for their tenants at lower prices. Based on Cable One's experience with circumstances such as those in Fargo, any assumption that MDU owners are likely to act in the best interests of their residents in selecting an exclusive video programming provider, rather than in their own economic self interest, is simply unfounded.[2] But even if the interests of MDU owners and MDU residents could be shown to occasionally coalesce, an approach which attempts to rely on building-by-building competition as a substitute for true consumer choice among competing MVPDs is nevertheless bad policy. Cable One urges the Commission to heed Congress' call to promote facilities based competition and consumer choice, rather than adopt procedures advocated by ICTA which simply make it easier for MDU owners to exercise their bottleneck power to eject incumbent MVPDs and award exclusive contracts which deny MDU residents a choice among competing video providers.

Cable One understands that both the NCTA and ICTA proposals have been submitted in the form of *ex parte* presentations, which has precluded a full understanding of the details of either proposal and has prevented a meaningful opportunity for comment and refinement from interested parties. Any FCC decision which affects internal broadband wiring in MDUs is likely to raise a multiplicity of complex issues and have wide ranging implications for the

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[2]In an effort to retain MDU subscribers, Cable One has occasionally been forced to engage in bidding contests with SMATV operators, and indeed Cable One has often been the successful bidder in such situations. Nevertheless, this experience only serves to confirm Cable One's position that MDU owners typically select the bidder offering the most consideration to the MDU owner, not the bidder offering the best service or lowest prices to MDU residents.

development of competition for video services, telephony, internet access and other communications services. Accordingly, before the Commission takes any precipitous action in this area, Cable One urges the Commission to issue a further notice of proposed rulemaking, with an expedited comment period, to allow for a full airing of both the NCTA and ICTA proposals.

Very truly yours,

Thomas O. Might
President
Cable One, Inc.

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cc: Hon. Reed E. Hundt
Hon. James H. Quello
Hon. Susan Ness
Hon. Rachelle B. Chong
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Meredith Jones, Esq.
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Meryl Icove, Esq.
Rick Chessen, Esq.

Cable Service Comparison

Cable ONE

Reception Service **$10.25**
12 Channels

Lifeline Service **$25.45**
43 Channels (Disney Channel Included)

Limited Service **$29.90**
50 Channels

Premium Services

HBO	$9.95
Showtime	$7.95
The Disney Channel	(Included in Lifeline Service)
Cinemax	$7.95
The Movie Channel	$8.95
Starz and Encore	$5.95
Showtime/Showtime 2/ TMC	$13.95
HBO/HBO 2/HBO 3/ Cinemax/Cinemax 2	$15.95
HBO/HBO 2/HBO 3/Cinemax/ Cinemax 2/Showtime/Showtime 2 TMC	$25.95

Pay-Per-View

12 Channels	Movies	$2.99
	Adult	$5.95

Other Services

Remote Control	$ .80
Addressable Converter	$ 1.50
Change of Service	$ 1.99
Installation	$29.78
Trip Charge	$ 9.89
Franchise Fee	5%
Home Wiring Maintenence	$ .50
Premium Guide	Free

Cable Plus

Variety Pac Service **$23.95**
30 Channels
(Includes Mandatory $.99 Guide)

Action Pac Service **$29.90**
38 Channels
(Must be purchased in order to receive ESPN, USA, TNN, TNT, Lifetime and the Weather Channel)

Super Pac Service **$33.20**
47 Channels

Premium Services

HBO	$10.95
Showtime	$ 8.95
The Disney Channel	$ 8.95
Cinemax	Not Offered
The Movie Channel	Not Offered
Starz and Encore	Not Offered

Multi-Plex Not Offered

Multi-Plex Not Offered

Multi-Plex Not Offered

Pay-Per-View

Not Offered

Other Services

Non-Addressable Converter With Remote Control	$ 4.95
Change of Service	$10.00
Installation	$35.00
Trip Charge (Non-Cable Problems)	$35.00
Miscellaneous Monthly Fee	$ 1.04

CABLE ONE

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CHANNEL LINE-UP

CH	NETWORK	CH	NETWORK
2	Local Access/Valuevision	39	American Movie Classics
3	ESPN	40	C-Span
4	KXJB (CBS)	41	The Learning Channel/Ed. Access
5	CNN	42	C-Span 2
6	WDAY (ABC)	43	QVC 2
7	USA	44	QVC
8	Command Video Previews	45	E! Entertainment
9	TNT	46	Court TV
10	KVRR (Fox)	47	TV Food Network
11	KVLY (NBC)	48	TV Land
12	Midwest Sports Channel	49	MSNBC
13	KFME (PBS)	50	ESPNews
14	CTV	51	ESPN 2
15	The Family Channel	52	Comedy Central
16	The Disney Channel	53	Bravo
17	**Cinemax**	54	The Cartoon Network
18	**Cinemax 2**	55	Turner Classic Movies
19	Prevue Guide	56	The History Channel
20	**HBO 3**	57	Sci-Fi Channel
21	**HBO 2**	58	Cable Billboard
22	**HBO**	59	Animal Planet
23	Starz *	**61**	**Showtime**
24	Encore *	**62**	**Showtime 2**
25	The Nashville Network	**63**	**The Movie Channel**
26	Lifetime	*64*	*Viewers Choice 1*
27	CNN Headline News	*65*	*Viewers Choice 3*
28	The Weather Channel	*66*	*Viewers Choice 4*
29	MTV	*67*	*Hot Choice*
30	The Discovery Channnel	*68*	*Playboy*
31	WTBS	*69*	*Adam and Eve*
32	Arts & Entertainment	*70*	*Spice*
33	Country Music Television	*71*	*Action*
34	CNBC	*72*	*Viewers Choice 5*
35	Religious Channel	*73*	*Viewers Choice 6*
36	WGN	*74*	*Viewers Choice 8*
37	Nickelodeon	*75*	*Viewers Choice 9*
38	VH-1		

Premium Services *Pay-Per-View* * Only Available in Standard Service

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CABLE ONE

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Prices DO NOT Include A 5% City Franchise Fee or FCC User Fee Unless Indicated

MONTHLY CHARGES

Total Choice Service (58 Channels) *Includes Equipment, Remote and Maintenance* *Plus HBO, HBO 2, HBO 3, Cinemax, Cinemax 2, Showtime, Showtime 2 and The Movie Channel*	$57.15
Preferred Service (55 Channels) *Includes Equipment, Remote and Maintenance* *Plus HBO, HBO 2, HBO 3, Cinemax and Cinemax 2*	$47.15
Premiere Service (53 Channels) *Includes Equipment, Remote and Maintenance* *Plus Showtime, Showtime 2 and The Movie Channel*	$45.15
Standard Service (52 Channels) *Includes Equipment, Remote and Maintenance*	$37.15
Limited Service (50 Channels) *Includes Equipment, Remote and Maintenance*	$31.20
Lifeline Service (43 Channels) *Includes Maintenance*	$25.95
Reception Service *	$10.25
Remote Control	$0.80
Additional Outlet	FREE
Duplicate Premium	$3.03
Addressable Converter	$1.50
Standard Converter	$1.49
Wire Maintenance	$0.50

PREMIUM SERVICES

HBO	$9.95
Cinemax	$7.95
Showtime	$7.95
The Movie Channel	$8.95

PACKAGES

HBO/HBO 2/HBO 3/Cinemax/Cinemax 2/Showtime/Showtime 2/The Movie Channel	$25.95
HBO/HBO 2/HBO 3/Cinemax/Cinemax 2	$15.95
Showtime/Showtime 2/The Movie Channel	$13.95

ADDITIONAL SERVICES

DMX	$9.95
Sega	$12.95

PAY-PER-VIEW

Movies	$2.99
Adult Home Theater	$5.95

INSTALLATION CHARGES

(Installation Charges DO Include the 5% Franchise Fee)

New Installation	$46.67
Reconnection	$29.78
Additional Outlet at Install/Relocate	$21.89
Additional Outlet/Relocate	$31.78
Converter Installation	$9.89
VCR Kit	$10.55
VCR Kit Installation	$9.89
Change of Service	$1.99
Hourly Service Charge	$19.78

Total Choice Service (Ch. 2-16, 17-22, 26-57, 59, 61-63)
Preferred Service (Ch. 2-16, 17-22, 26-57, 59)
Premiere Service (Ch. 2-16, 19, 26-57, 59, 61-63)
Standard Service (Ch. 2-16, 19, 23-57, 59)
Limited Service (Ch. 2-16, 19, 26-57, 59)
Lifeline Service (Ch. 2-16, 19, 26-50, 59)
Reception Service (Ch. 2,4,6,10,11,13,19,31,36,41-43)

Converter and Wire Maintenance FREE to Senior Citizens.
** Reception Service requires a $75.00 refundable equipment deposit.*

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CABLE PLUS

FARGO SERVICE

Variety 2-13, 23-43	*$23.95*
Action 14-21	*$ 5.95*
Super 50-58	*$ 3.30*

No monthly fees for additional outlets

PREMIER SERVICES

Home Box Office	*$10.95*
Showtime	*$ 8.95*
Disney	*$ 8.95*

Prices quoted in addition to Fargo Service

ACTIVATION CHARGES

Fargo Service	*$35.00*
Fargo + 1 Premier	*$30.00*
Fargo + 2 or more Premiers	*$20.00*
Activate additional outlet	*$20.00*
Trip Charge	*$35.00*

All Prices Effective January 1, 1997

Channels and prices subject to change without notice.

Converter Box not required with cable-ready TV/VCR. Please check your cable-ready TV/VCR for a CATV or CABLE button and activate to receive channels above 13.

Prices Subject to Change Without Notice
We Accept Visa and Mastercard

FOR SERVICE / INFORMATION CALL

1-800-367-4918

CABLE PLUS

FARGO

2	PMA	Property Management Access
3	ENTV	Entrance Viewing
4	CBS	KXJB - 4 - Fargo
5	*SHO**	***SHOWTIME***
6	ABC	WDAY - 6 - Fargo
7	FAM	The Family Channel
8	INFO	Information Channel
8	NWS	National Weather Service - Radio
9	CNN	Cable News Network
10	FOX	KVRR - 15 - Fargo
11	NBC	KVLY - 11 - Fargo
12	CSPAN	Government - 24 Hours
13	PBS	KFME - 13 - Fargo
14	MTV	Music Television
15	LIFE	Lifetime Television
16	ESPN	Sports - 24 Hours
17	TNN	The Nashville Network
18	USA	USA Network
19	ESPN2	The Deuce
20	TWC	The Weather Channel
21	TNT	Turner Network Television
22	*DIS**	***THE DISNEY CHANNEL***
23	NICK	Nickelodeon/Nick at Nite
25	*HBO**	***HOME BOX OFFICE***
26	HSN	Home Shopping Network
27	AMC	American Movie Classics
28	SCIFI	Science Fiction Channel
29	ODSY	Odyssey - Multi-Denominational
30	VH-1	Video Hits One
31	CNNHL	CNN Headline News
33	COM	Comedy Central
34	TOON	Cartoon Network
35	TTC	The Travel Channel
36	A&E	Arts & Entertainment
37	CMTV	Country Music Television
38	E!	Entertainment Television
39	CNNfn/I	CNN Financial / International
40	MEU	Mind Extention University
41	DISC	The Discovery Channel
42	TLC	The Learning Channel
43	COURT	Court Television
50	WSBK	Superstation - Boston
51	WWOR	Superstation - New York
52	WPIX	Superstation - New York
53	TBS	Superstation - Atlanta
54	WGN	Superstation - Chicago
55	CBMT	Superstation - Montreal
56	WCCO	Superstation - Minneapolis
57	CBCN	Superstation - Toronto
58	KTLA	Superstation - Los Angeles

1/1/97

* *Optional Premium Programming. (Basic service required.)*

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